

**REMARKS**

In the Office Action, the Examiner:

- objects to claims 2 and 15 due to informalities;
- rejects claims 1-10 and 15-20 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement;
- rejects claims 1-10 and 15-20 under 35 U.S.C. § 103(a) as allegedly unpatentable over ERICKSON et al. (U.S. Patent 6,882,765; hereinafter ERICKSON);
- rejects claim 1 under 35 U.S.C. § 103(a) as allegedly unpatentable over ERICKSON and KOROTKY et al. (U.S. Patent Application Pub. No. 2004/0052518; hereinafter KOROTKY);
- rejects claim 11 under 35 U.S.C. § 103(a) as allegedly unpatentable over YAMAYA et al. (U.S. Patent Application Pub. No. 2002/0184387; hereinafter YAMAYA) and PAN (U.S. Patent 7,274,869); and
- rejects claims 12-14 under 35 U.S.C. § 103(a) as allegedly unpatentable over YAMAYA, PAN, and ERICKSON.

Applicant traverses this objection and these rejections.

By way of this amendment, Applicant amends claims 1, 2, 4, 6, 7, 15, and 16 to improve form. No new matter is added. Claims 1-20 are pending.

**Claim Objections**

Claims 2 and 15 stand objected due to informalities. Applicant amends claims 2 and 15 to address the Examiner's concerns. Accordingly, Applicant

respectfully requests that the Examiner reconsider and withdraw the objections to claims 2 and 15.

**Rejection under 35 U.S.C. § 112, first paragraph**

Claims 1-10 and 15-20 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. While not acquiescing in the Examiner's rejection, but merely to expedite prosecution, Applicant amends independent claims 1, 6, and 15 and their dependent claims to address the Examiner's concerns. Accordingly, Applicant requests that the Examiner reconsider and withdraw the rejection of claims 1-10 and 15-20 under 35 U.S.C. 112, first paragraph.

**Rejection Under 35 U.S.C. § 103(a) based on ERICKSON**

Claims 1-10 and 15-20 stand rejected under 35 U.S.C. § 103(a) as allegedly anticipated by ERICKSON. Applicant respectfully traverses this rejection.

Applicant notes that independent claims 1, 6, and 15 are amended to recite features similar to (yet possibly of different scope than) features found in independent claim 11, which stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over YAMAYA and PAN. Therefore, Applicant will address claims 1-10 and 15-20 as though rejected under YAMAYA and PAN, below.

**Rejection under 35 U.S.C. § 103(a) based on ERICKSON and KOROTKY**

Claim 1 stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over ERICKSON and KOROTKY. Applicant respectfully traverses this rejection.

While not acquiescing in this rejection, Applicant respectfully submits that the disclosure of KOROTKY does not remedy the deficiencies in the disclosure

ERICKSON, as discussed below with respect to amended claim 1. Accordingly, Applicant requests that the Examiner reconsider and withdraw the rejection of amended claim 1 under 35 U.S.C. § 103(a) based on ERICKSON and KOROTKY.

**Rejection under 35 U.S.C. § 103(a) based on YAMAYA and PAN**

Claim 11 stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over YAMAYA and PAN. Applicant respectfully traverses this rejection.

Claim 11 is directed to an optical cross-connect system comprising a spare port to transmit low priority data to or from a router; and a working port to transmit high priority data to or from a primary router, where the working port is connected to the router in response to a failure of the primary router, and where the transmission of low priority data to or from the router is preempted by the transmission of the high priority data to or from the router, in response to the failure of the primary router. Applicant respectfully submits that YAMAYA and PAN, whether taken alone or in any reasonable combination, do not disclose or suggest one or more features of claim 11.

For example, YAMAYA and PAN do not disclose or suggest that the working port is connected to the router in response to a failure of the primary router, and where the transmission of low priority data from the router is preempted by the transmission of the high priority data from the router, in response to the failure of the primary router. The Examiner admits that YAMAYA does not disclose this feature and relies on col. 15, ll. 4-8 and 24-27 of PAN for allegedly disclosing, "transmitting low priority data using a spare port and transmitting high priority data using a working port" and col. 2, ll. 26-36 of PAN for allegedly disclosing, where the

transmission of low priority data to or from the router is preempted by the transmission of the high priority data to or from the router, in response to the failure of the primary router.” (Office Action, pp. 13 and 14.) Applicant submits that the Examiner has not established a *prima facie* case of obviousness with respect to the above-identified feature of claim 11.

For example, with respect to the reasons for combining YAMAYA and PAN, the Examiner alleges (Office Action, p. 14):

It would have been obvious to one skilled in the art at the time the invention was made to modify the invention of Yamaya, and transmit a low priority data using a spare port and a high priority data using a working port and where the transmission of low priority data to or from the router to be preempted by the transmission of the high priority data to or from the router, in response to the failure of the primary router, as taught by Pan, thus providing an efficient data transmission system by utilizing bandwidth for high priority data by permitting the low priority data, as discussed by Pan.

Applicant submits that the Examiner's allegation is merely a conclusory statement of an alleged benefit of the combination. Such conclusory statements have been repeatedly held to be insufficient for establishing a *prima facie* case of obviousness.

In this respect, Applicant relies upon KSR International Co. v. Teleflex Inc., 550 U.S. 398 (2007) (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)), where it was held that rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

Applicant submits that one of ordinary skill in the art would reasonably modify the disclosure of YAMAYA with the disclosure of PAN to obtain the above-identified feature of claim 11.

Figure 13 of YAMAYA discloses that a master router 10 is connected, by a port P7, to a port P1 of a switching hub 8 and that a back-up router 11 is connected, by a port P7, to a port P2 of the switching hub 8. The back-up router takes over the operations of the master router, should the master router fail. The Examiner alleges that port P1 corresponds to the claimed working port that transmits high priority data. (Office Action, p. 13.)

As discussed above, the Examiner relies on PAN for allegedly disclosing transmitting a low priority data using a spare port. Even if this allegation is true – a point Applicant does not concede – Applicant notes that YAMAYA discloses that data that is received from the back-up router (in the back-up state) is discarded and that only data from the master router is transmitted to the switching hub 8. (See e.g., ¶¶ 0003 and 0054.) Thus, any data that is transmitted from port P7 of the back-up router is discarded. Therefore, YAMAYA specifically discloses that no data is transmitted by the spare port P7 of the back-up router to the switching hub 8. Since the spare port of the back-up router of YAMAYA does not transmit data to a switching hub, the spare port of the back-up router cannot be modified by PAN to transmit low priority data, as would be required under the Examiner's interpretation of YAMAYA and PAN. Therefore, the Examiner has not established a prima facie case of obviousness with regard to the above-identified feature of claim 11.

For at least the foregoing reasons, Applicant submits that claim 11 is patentable over YAMAYA and PAN, whether taken alone or in any reasonable combination. Accordingly, Applicant requests that the Examiner reconsider and

withdraw the rejection of claim 11 under 35 U.S.C. § 103(a) based on YAMAYA and PAN.

Amended independent claims 1, 6, and 15 recite features similar to (yet possibly of different scope than) features described above with respect to claim 11. Therefore, Applicant submits that ERICKSON does not anticipate claims 1, 6, and 15. Moreover, Applicant submits that claims 1, 6, and 15 are patentable over YAMAYA and PAN, whether taken alone or in any reasonable combination, for at least reasons similar to the reasons set forth above with respect to claim 11. Accordingly, Applicant requests that the Examiner reconsider and withdraw the rejection of claims 1, 6, and 15 under 35 U.S.C. § 102(e) based on ERICKSON.

Claims 2-5 depend from claim 1, claims 7-10 depend from claim 6, and claims 16-20 depend from claim 15. Therefore, Applicant submits that ERICKSON does not anticipate claims 2-5, 7-10, and 15-20 for at least the reasons set forth above with respect to amended claims 1, 6, and 15, respectively. Moreover, Applicant submits that claims 2-5, 7-10, and 15-20 are patentable over YAMAYA and PAN, whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to amended claims 1, 6, and 15, respectively.

**Rejection under 35 U.S.C. § 103(a) based on YAMAYA, PAN, and ERICKSON**

Claims 12-14 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over YAMAYA, PAN, and ERICKSON. Applicant respectfully traverses this rejection.

Claims 12-14 depend from claim 11. While not acquiescing in this rejection, Applicant respectfully submits that the disclosure of ERICKSON does not remedy

the deficiencies in the disclosures of YAMAYA and PAN, as discussed above with respect to claim 11. Therefore, Applicant submits that claims 12-14 are patentable over YAMAYA, PAN and ERICKSON, whether taken alone or in any reasonable combination, for at least the reasons as set forth above with respect to claim 11. Accordingly, Applicant requests that the Examiner reconsider and withdraw the rejection of claims 12-14 under 35 U.S.C. § 103(a) based on YAMAYA, PAN and ERICKSON.

### **CONCLUSION**

In view of the foregoing amendments and remarks, Applicant respectfully requests the Examiner's reconsideration of this application, and the timely allowance of the pending claims.

While the present application is now believed to be in condition for allowance, should the Examiner find some issue to remain unresolved, or should any new issues arise which could be eliminated through discussions with Applicants' representative, then the Examiner is invited to contact the undersigned by telephone to expedite prosecution of this application.

As Applicant's remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant's silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such assertions (e.g., whether a reference constitutes prior art, assertions as to dependent claims, reasons for combining or modifying a reference, etc.) is not a concession by Applicant that such assertions are accurate or such requirements

have been met, and Applicant reserves the right to analyze and dispute such assertions/requirements in the future.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

HARRITY & HARRITY, LLP

By: /Michael S. Brooke, Reg. No. 41,641/  
Michael S. Brooke  
Registration No. 41,641

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11350 Random Hills Road  
Suite 600  
Fairfax, Virginia 22030  
Telephone: (571) 432-0800  
Facsimile: (571) 432-0808

**CUSTOMER NUMBER: 25537**